

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Talisayan	Team: Squad #11	CCRB Case #: 201906712	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 07/16/2019 1:20 AM	Location of Incident: 104-61 108th Street; 106th Precinct Stationhouse	Precinct: 102	18 Mo. SOL 1/16/2021	EO SOL 9/2/2021	
Date/Time CV Reported Tue, 07/16/2019 1:30 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 07/31/2019 10:41 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christopher Diorio	13272	960464	106 PCT
2. POM Michael Agunzo	18509	962913	106 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Brian Latva	05398	938823	106 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Agunzo	Abuse: In front of 104-61 108th Street, in Queens, Police Officer Michael Agunzo refused to provide his name to § 87(2)(b)	
B.POM Michael Agunzo	Abuse: In front of 104-61 108th Street, in Queens, Police Officer Michael Agunzo refused to provide his shield number to § 87(2)(b)	
C.POM Christopher Diorio	Abuse: In front of 104-61 108th Street, in Queens, Police Officer Christopher Diorio refused to provide his name to § 87(2)(b)	
D.POM Christopher Diorio	Abuse: In front of 104-61 108th Street, in Queens, Police Officer Christopher Diorio refused to provide his shield number to § 87(2)(b)	
E.POM Michael Agunzo	Abuse: In front of 104-61 108th Street, in Queens, Police Officer Michael Agunzo frisked § 87(2)(b)	
F.POM Christopher Diorio	Discourtesy: In front of 104-61 108th Street, in Queens, Police Officer Christopher Diorio spoke discourteously to § 87(2)(b)	
G.POM Christopher Diorio	Discourtesy: In front of 104-61 108th Street, in Queens, Police Officer Christopher Diorio acted discourteously toward § 87(2)(b)	
H.POM Christopher Diorio	Abuse: In front of 104-61 108th Street, in Queens, Police Officer Christopher Diorio damaged § 87(2)(b)'s property.	
I.POM Michael Agunzo	Abuse: At the 106th Precinct Stationhouse, Police Officer Michael Agunzo threatened to arrest § 87(2)(b)	

## Case Summary

On July 16, 2019, § 87(2)(b) filed this complaint with IAB, generating Log 19-27410, which was subsequently received at the CCRB on July 31, 2019.

On July 16, 2019, at approximately 1:20 a.m., § 87(2)(b) was parked by a fire hydrant in front of 104-61 108<sup>th</sup> Street in Queens. § 87(2)(b) had been talking to his friend, § 87(2)(b) (her last name is unknown), for approximately three hours when two officers in a marked police vehicle arrived. PO Michael Agunzo and PO Christopher Diorio, both of the 106<sup>th</sup> Precinct, approached § 87(2)(b)'s vehicle. PO Agunzo spoke to § 87(2)(b) while PO Diorio stood by the front passenger's side, where § 87(2)(b) was sitting. PO Agunzo asked for § 87(2)(b)'s documentation, and § 87(2)(b) asked PO Agunzo for his name and shield number three times. PO Agunzo did not provide his name and shield number to § 87(2)(b) (**Allegation A: Abuse of Authority**, § 87(2)(g) and **Allegation B: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) also asked PO Diorio for his name and shield number three times until PO Diorio allegedly spelled his name out too quickly for § 87(2)(b). PO Diorio allegedly did not provide his shield number to § 87(2)(b) (**Allegation C: Abuse of Authority**, § 87(2)(g) and **Allegation D: Abuse of Authority**, § 87(2)(g)).

PO Agunzo instructed § 87(2)(b) to exit his vehicle, and § 87(2)(b) complied. PO Agunzo instructed § 87(2)(b) to stand by the rear of his vehicle, where PO Agunzo allegedly frisked § 87(2)(b) (**Allegation E: Abuse of Authority**, § 87(2)(g)). PO Diorio then tried to hand § 87(2)(b) a summons, which § 87(2)(b) refused to sign. PO Diorio told § 87(2)(b) "You don't have to sign shit. Here's your shit." (**Allegation F: Discourtesy**, § 87(2)(g)). PO Diorio allegedly threw the summons and § 87(2)(b)'s driver's license at the rear window of § 87(2)(b)'s vehicle, allegedly causing damage to § 87(2)(b)'s driver's license (**Allegation G: Discourtesy**, § 87(2)(g) and **Allegation H: Property damage**, § 87(2)(g)).

At approximately 1:30 a.m., on the same day, § 87(2)(b) visited the 106<sup>th</sup> Precinct stationhouse to file a complaint against PO Agunzo and PO Diorio. PO Agunzo and PO Diorio entered the stationhouse, and § 87(2)(b) told PO Agunzo that he would "fuck him up" and punch PO Agunzo in the face. PO Agunzo allegedly threatened § 87(2)(b) with arrest (**Allegation I: Abuse of Authority**, § 87(2)(g)).

PO Diorio issued § 87(2)(b) a parking summons as a result of the initial interaction [Board Review 01].

The investigation obtained body-worn camera (BWC) footage from PO Agunzo and PO Diorio.

## Findings and Recommendations

**Allegation (A) Abuse of Authority: In front of 104-61 108th Street, in Queens, Police Officer Michael Agunzo refused to provide his name to § 87(2)(b).**

**Allegation (B) Abuse of Authority: In front of 104-61 108th Street, in Queens, Police Officer Michael Agunzo refused to provide his shield number to § 87(2)(b).**

It is undisputed that § 87(2)(b) was parked by a fire hydrant located in front of 104-61 108<sup>th</sup> Street when he was approached by PO Agunzo at the driver's side door.

PO Agunzo's body-worn camera captures his interaction with § 87(2)(b) once the latter exits his vehicle. Upon exiting, § 87(2)(b) asks PO Agunzo for his name and shield number. PO Agunzo

replies, “I’ll have it on your ticket” [Board Review 02, time stamps 00:01:08 to 00:01:20 in the video player]. PO Agunzo’s body-worn camera captures § 87(2)(b)’s continued requests for PO Agunzo’s name and shield. PO Agunzo instructs § 87(2)(b) to the back of his vehicle, where § 87(2)(b) tells PO Agunzo that he will get his name and shield number, to which PO Agunzo replies, “No problem.” § 87(2)(b) asks for PO Agunzo’s name, and PO Agunzo states, “One second, sir. You’ll get it.” At this point, PO Agunzo has not provided his name and shield number to § 87(2)(b) [Board Review 02, time stamps 00:04:30 to 00:05:08 in the video player]. PO Agunzo’s body-worn camera captures PO Agunzo providing his name to § 87(2)(b). When § 87(2)(b) is on the phone with 911, PO Agunzo states, “Officer Agunzo, A-G-U-N-Z-O.” § 87(2)(b) immediately replies, “Suck my dick, nigga. I don’t want to hear it. I’m not talking to you, bro” [Board Review 02, time stamps 00:06:35 to 00:06:50 in the video player]. The remainder of the footage does not capture PO Agunzo providing his shield number to § 87(2)(b).

§ 87(2)(b) stated that when PO Agunzo initially spoke to § 87(2)(b) at the driver’s side, § 87(2)(b) asked for PO Agunzo’s name and shield number three times [Board Review 03].

On December 27, 2019, PO Agunzo testified that he provided his name and shield number to § 87(2)(b) upon request [Board Review 04].

On February 26, 2020, PO Agunzo was interviewed again to review his body-worn camera footage [Board Review 02] and clarify statements he made in his previous interview. When § 87(2)(b) asked for PO Agunzo’s name and shield number upon leaving his vehicle, PO Agunzo did not provide his name and shield number for safety purposes. § 87(2)(b) continued to ask for PO Agunzo’s name and shield number, but PO Agunzo did not provide his name and shield number because he believed he was going to issue § 87(2)(b) a summons which would list the information being requested (PO Diorio ultimately issued the summons). PO Agunzo spelled his name out for § 87(2)(b) and tried to state his shield number until § 87(2)(b) interrupted by telling PO Agunzo to “Shut the fuck up” [Board Review 05].

PO Diorio testified that PO Agunzo provided his name and shield number to § 87(2)(b) upon request [Board Review 06].

NYPD Patrol Guide Procedure 203-09 requires officers to courteously and clearly state their rank, name, shield number and command, or otherwise provide them, to anyone who requests them to do so [Board Review 07].

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**Allegation (C) Abuse of Authority: In front of 104-61 108th Street, in Queens, Police Officer Christopher Diorio refused to provide his name to § 87(2)(b).**

**Allegation (D) Abuse of Authority: In front of 104-61 108th Street, in Queens, Police Officer Christopher Diorio refused to provide his shield number to § 87(2)(b).**

PO Diorio's body-worn camera footage begins with PO Diorio leaving the driver's side of his vehicle. PO Agunzo is by the driver's side of § 87(2)(b)'s vehicle. As PO Agunzo speaks to § 87(2)(b) who is now standing outside by the driver's side, § 87(2)(b) states, "Hello? Do you mind if I have your name?" PO Diorio, who is standing by the driver's side of his vehicle, spells his name out for § 87(2)(b) twice and states his name twice. § 87(2)(b) states, "Diorio? Okay" [Board Review 08, 00:00:00 to 00:01:35 in the video player]. The remainder of the footage does not capture any requests for PO Diorio's shield number [Board Review 08, time stamps 00:01:35 to 00:07:44 in the video player].

§ 87(2)(b) stated that while PO Diorio was by the passenger's side of § 87(2)(b)'s vehicle, § 87(2)(b) asked for PO Diorio's name and shield number three times. PO Diorio eventually spelled his name out, but PO Diorio spelled it too quickly for § 87(2)(b) [Board Review 03].

PO Diorio testified that he provided his name and shield number to § 87(2)(b) [Board Review 06].

NYPD Patrol Guide Procedure 203-09 requires officers to courteously and clearly state their rank, name, shield number and command, or otherwise provide them, to anyone who requests them to do so [Board Review 07].

§ 87(2)(g)

**Allegation (E) Abuse of Authority: In front of 104-61 108th Street, in Queens, Police Officer Michael Agunzo frisked § 87(2)(b).**

It is undisputed that PO Agunzo instructed § 87(2)(b) to leave his vehicle, and § 87(2)(b) stepped outside.

PO Agunzo's body-worn camera captures PO Agunzo instructing § 87(2)(b) to leave his vehicle. § 87(2)(b) leaves his vehicle. PO Agunzo does not frisk § 87(2)(b) once he steps outside [Board Review 02, 00:00:00 to 00:01:30 in the video player]. PO Agunzo instructs § 87(2)(b) to stand by the rear of his vehicle, and § 87(2)(b) calls 911 [Board Review 02, time stamps 00:01:30 to 00:04:35 in the video player]. The remainder of the footage, which continues until PO Agunzo reenters the passenger's side of his vehicle, does not capture PO Agunzo frisking § 87(2)(b) [Board Review 02, time stamps 00:04:35 to 08:05 in the video player].

§ 87(2)(b) stated that when PO Agunzo instructed § 87(2)(b) to stand by the rear of § 87(2)(b)'s vehicle, PO Agunzo patted down the exterior of § 87(2)(b)'s white tank top and skinny jeans, all the way down to § 87(2)(b)'s ankles [Board Review 03].

PO Agunzo initially testified that when he spoke to § 87(2)(b) at the driver's side, § 87(2)(b) was "out of control" and making gestures with his hands. § 87(2)(b) did not make any other movements

aside from making gestures with his hands. PO Agunzo told § 87(2)(b) to stay calm three or four times. § 87(2)(b) was not listening to PO Agunzo's commands. For his safety, PO Agunzo instructed § 87(2)(b) to step out of his vehicle. PO Agunzo then patted down the sides of § 87(2)(b)'s torso and his waistband area to check for weapons based on § 87(2)(b)'s aggressiveness and movements. PO Agunzo did not observe any bulges on § 87(2)(b)'s person. PO Agunzo did not have a specific indication that § 87(2)(b) was carrying weapons. PO Agunzo checked § 87(2)(b)'s waistband area and body based on § 87(2)(b)'s uncooperativeness and his hand movements [Board Review 04].

On February 26, 2020, in a subsequent interview, PO Agunzo reviewed his body-worn camera footage [Board Review 02]. PO Agunzo confirmed that he did not frisk § 87(2)(b) once he stepped outside of his vehicle for the duration of their interaction [Board Review 05].

PO Diorio testified that he approached the driver's side of § 87(2)(b)'s vehicle and spoke to § 87(2)(b). He did not recall who instructed § 87(2)(b) to leave his vehicle. At some point, PO Agunzo stepped out of the police vehicle. PO Agunzo patted down the exterior of § 87(2)(b)'s body when he was outside of the vehicle. PO Diorio did not make any observations that § 87(2)(b) was carrying a weapon. PO Diorio did not recall seeing any bulges on § 87(2)(b)'s person, and PO Diorio did not recall seeing anything in the vehicle that indicated § 87(2)(b) was carrying a weapon [Board Review 06].

§ 87(2)(g)

**Allegation (F) Discourtesy: In front of 104-61 108th Street in Queens, Police Officer Christopher Diorio spoke discourteously to § 87(2)(b)**

PO Diorio's body-worn camera footage captures PO Diorio and § 87(2)(b) arguing about the summons. § 87(2)(b) states that he will not sign the summons. PO Diorio states, "You don't have to sign shit. Here's your shit. Have a good night" [Board Review 08, time stamps 00:07:35 to 00:07:50 in the video player].

§ 87(2)(b) did not state that PO Diorio spoke discourteously to him [Board Review 03].

PO Diorio acknowledged that he told § 87(2)(b) that he did not have to "sign shit." PO Diorio did not have a reason for stating why he said the aforementioned statement [Board Review 06].

NYPD Patrol Guide Procedure 200-02 indicates that members of service must value human life, respect the dignity of each individual and render their services with courtesy and civility [Board Review 09]. DAO-DCT Case Number 2018-18951 [Board Review 10] states that profane remarks, made during stressful violent confrontations or while an officer is trying to gain control of a chaotic situation, are not misconduct.

§ 87(2)(g)

**Allegation (G) Discourtesy: In front of 104-61 108th Street, in Queens, Police Officer Christopher Diorio acted discourteously to § 87(2)(b)**

**Allegation (H) Abuse of Authority: In front of 104-61 108th Street, in Queens, Police Officer Christopher Diorio damaged § 87(2)(b)'s property.**

PO Diorio's body-worn camera footage captures PO Diorio informing § 87(2)(b) that he does not have to sign the summons. PO Diorio walks by § 87(2)(b) who is standing by the rear of his vehicle. Off-camera, § 87(2)(b) states, "I'm not signing it [the summons]." As PO Diorio walks to his vehicle, which is parked parallel to § 87(2)(b)'s vehicle, a summons can be seen falling in front of PO Diorio. PO Diorio's body-worn camera footage does not capture any individual causing the summons to fall, nor does the footage capture how § 87(2)(b)'s driver's license is returned [Board Review 08, time stamps 00:07:20 to 00:07:54 in the video player].

§ 87(2)(b) stated that PO Diorio told § 87(2)(b) to take the summons. § 87(2)(b) refused to sign it. PO Diorio then, with a movement similar to a card shuffler dealing cards, threw § 87(2)(b)'s driver's license and the summons at the back window of § 87(2)(b)'s vehicle. § 87(2)(b)'s driver's license bounced off the window and was damaged in an unspecified way. The summons fell onto the street [Board Review 03].

PO Diorio testified that PO Diorio attempted to hand § 87(2)(b) the summons, which § 87(2)(b) did not accept. PO Diorio dropped the summons, registration, and § 87(2)(b)'s driver's license onto the trunk of § 87(2)(b)'s vehicle. PO Diorio did not recall whether § 87(2)(b) crumpled the summons into a ball. § 87(2)(b) threw the summons in the direction of PO Diorio [Board Review 06].

On February 26, 2020, in a subsequent interview, PO Diorio was presented with his body-worn camera footage [Board Review 08]. PO Diorio tried to hand the summons to § 87(2)(b) but he did not accept it. PO Diorio then tossed the summons and § 87(2)(b)'s driver's license onto the hood of § 87(2)(b)'s vehicle. PO Diorio confirmed that the summons was falling in his direction. PO Diorio did not observe any damage on § 87(2)(b)'s driver's license while PO Diorio was handling it [Board Review 11].

PO Agunzo testified that PO Diorio attempted to hand § 87(2)(b) the summons, which § 87(2)(b) did not accept. PO Diorio dropped the summons and § 87(2)(b)'s driver's license onto the trunk of § 87(2)(b)'s vehicle. § 87(2)(b) crumpled the summons into a ball and threw it in the direction of the officers' vehicle. PO Agunzo did not know whether § 87(2)(b) had his driver's license on him [Board Review 04].

On February 26, 2020, in a subsequent interview, PO Agunzo was presented with PO Diorio's body-worn camera footage [Board Review 08]. PO Agunzo was walking behind his vehicle when the summons was thrown. § 87(2)(b) crumpled the summons and threw it. PO Agunzo did not directly see the summons being thrown [Board Review 05].

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**Allegation (I) Abuse of Authority: At the 106<sup>th</sup> Precinct stationhouse, PO Michael Agunzo threatened § 87(2)(b) with arrest.**

It is undisputed that § 87(2)(b) encountered PO Agunzo and PO Diorio at the front desk area of the 106<sup>th</sup> Precinct stationhouse.

§ 87(2)(b) stated that as he was speaking to an unidentified female officer at the desk, PO Agunzo and PO Diorio entered the stationhouse. PO Agunzo told § 87(2)(b) that he did not belong there. § 87(2)(b) then replied, “There’s no way you literally followed me here just to be on my nerves again. I didn’t come here to you.” § 87(2)(b) told PO Agunzo, “Just because you’re a cop, I will literally fuck you up.” PO Agunzo replied, “If you threaten an officer, I can take you in.” § 87(2)(b) then said, “Listen, you might as well take me in because I’m letting you know straight up. The next time you . . . say something to me that I don’t like – I’m going to punch you in the face, cop or not” [Board Review 03].

PO Agunzo testified that upon entering the stationhouse with PO Diorio, PO Agunzo saw § 87(2)(b) talking to an unidentified officer assigned to the telephone switchboard. PO Agunzo did not speak to § 87(2)(b) and PO Agunzo did not know whether PO Diorio spoke to § 87(2)(b). PO Agunzo stated that he could have arrested § 87(2)(b) for disorderly conduct for threatening to fight him on the street. PO Agunzo did not threaten § 87(2)(b) with arrest, and PO Agunzo did not know whether PO Diorio threatened § 87(2)(b) with arrest. Sgt. Brian Latva instructed PO Agunzo and PO Diorio to go downstairs, and the officers walked away from § 87(2)(b) [Board Review 04].

PO Diorio testified that he and PO Agunzo walked into the stationhouse and saw § 87(2)(b) by the front waiting area. § 87(2)(b) was speaking with unidentified officers and Sgt. Latva at the front desk. § 87(2)(b) seemed upset with the summons he received. PO Diorio said something to § 87(2)(b) but PO Diorio did not recall what he said. PO Diorio did not recall threatening § 87(2)(b) with arrest, nor did he recall PO Agunzo threatening § 87(2)(b) with arrest. PO Diorio walked away from § 87(2)(b) who was still speaking with officers at the waiting room area [Board Review 06].

§ 87(2)(g)

#### **Allegation not Pled**

§ 87(2)(b) alleged that officers at the 106<sup>th</sup> Precinct stationhouse allegedly did not process his complaint against officers. However, § 87(2)(b) requested the CCRB to not investigate this allegation.

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party [Board Review 12].
- PO Agunzo has been a member of service for three years. One complaint, and one allegation, has been filed against him. It has not been substantiated.
- PO Diorio has been a member of service for four years. Two active complaints, and two allegations, have been filed against him. These complaints are under investigation.

#### **Mediation, Civil and Criminal Histories**

- This case was initially referred to mediation. It was returned to investigation on December 3, 2019.
- On March 6, 2020, the Office of the New York City Comptroller indicated that there was no Notice of Claim related to this incident [Board Review 13].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 11

Investigator: \_\_\_\_\_ Inv. Mike Talisayan \_\_\_\_\_ 07/01/2020  
Signature Print Title & Name Date

Squad Leader: Edwin Pena      IM Edwin Pena      07/02/20  
Signature      Print Title & Name      Date

Reviewer: \_\_\_\_\_

Signature                      Print Title & Name                      Date